

EXTENDED EMPLOYMENT

PROGRAM RULES

EFFECTIVE, JULY 1, 1998

MINNESOTA DEPARTMENT OF ECONOMIC SECURITY
REHABILITATION SERVICES BRANCH

Minnesota Department of Economic Security
Extended Employment Program Rules, Chapter 3300
Effective July 1, 1998

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1 **3300.2005 DEFINITIONS.**

2 Subpart 1. **Scope.** When used in parts 3300.2005 to 3300.2055, the terms defined in
3 this part have the meanings given them.

4 Subp. 2. **Accreditation.** "Accreditation" means accreditation by The Rehabilitation
5 Accreditation Commission ... CARF (CARF).

6 Subp. 3. **Advocacy organization.** "Advocacy organization" means a public or private
7 nonprofit organization that has a mission statement defining its advocacy for persons
8 with disabilities and does not receive funding for direct employment services to clients.

9 Subp. 4. **Annual survey.** "Annual survey" means the yearly survey of department
10 staff, extended employment program providers, consumer and advocacy organizations,
11 organizations representing cultural and racial minorities, and county social service
12 agencies to determine the need for center-based employment, community employment,
13 and supported employment.

14 Subp. 5. **Appropriate modes of communication.** "Appropriate modes of
15 communication" means specialized aids and supports that enable an individual with a
16 disability to comprehend and respond to information that is being communicated.
17 Appropriate modes of communication include, but are not limited to, the use of
18 interpreters, open- and closed-captioned videos, specialized telecommunications
19 services and audio recordings, Braille and large-print materials, materials in electronic
20 formats, augmentative communication devices, graphic presentations, and simple
21 language materials.

22 Subp. 6. **Center-based employment.** "Center-based employment" means employment
23 which provides paid work on the premises of an extended employment provider and
24 training services or other services necessary for employment on or off the premises of an
25 extended employment provider to persons who, because of the nature and severity of
26 their disabilities, need intensive ongoing employment support services funded by the
27 state unit in order to work.

3300.2005

1 Subp. 6a. **Center-based fund.** "Center-based fund" means the extended employment
2 program fund which pays for the center-based employment subprogram.

3 Subp. 7. **Certification.** "Certification" means the process used by the department to
4 ensure that extended employment program providers meet the minimum state
5 standards in part 3300.2010.

6 Subp. 8. **Commissioner.** "Commissioner" means the commissioner of the Minnesota
7 Department of Economic Security.

8 Subp. 9. **Competitive employment.** "Competitive employment" means work in the
9 competitive labor market that is performed on a full-time or part-time basis in an
10 integrated setting; and for which an individual is compensated at or above the
11 minimum wage, but not less than the customary wage and level of benefits paid by the
12 employer for the same or similar work performed by individuals who are not disabled.

13 Subp. 10. **Community employment.** "Community employment" is paid work in the
14 community requiring intensive ongoing employment support services that does not
15 meet the definition of supported employment only because the worker is paid less than
16 minimum wage or the employment does not meet the criteria of an integrated setting, or
17 the worker is compensated at or above the minimum wage but below the customary
18 wage paid by the employer for the same or similar work performed by individuals
19 without a disability.

20 Subp. 10a. **Community support fund.** "Community support fund" means the
21 extended employment program fund which pays for the community employment
22 subprogram and supported employment subprogram.

23 Subp. 11. **Consumer Price Index or CPI.** "Consumer Price Index" or "CPI" means the
24 index of prices of goods and services from the United States Department of Commerce
25 published on a monthly basis and available from the Minnesota Department of
26 Economic Security.

1 Subp. 12. **Day training and habilitation program or DTH.** "Day training and
2 habilitation program" or "DTH" means a program of services as defined in Minnesota
3 Statutes, section 252.41, subdivision 3.

4 Subp. 13. **Department.** "Department" means the Minnesota Department of Economic
5 Security.

6 Subp. 14. **Expanded program.** "Expanded program" means an expansion of an
7 existing provider's capacity to provide community employment or supported
8 employment to persons with mental illness, traumatic brain injury, or the most severe
9 disabilities, to persons from racial or ethnic minorities, to other unserved or
10 underserved populations, and to persons living in geographic regions of Minnesota
11 unserved or underserved by the extended employment program.

12 Subp. 15. **Extended employment program or program.** "Extended employment
13 program" or "program" means an employment program which provides the ongoing
14 employment support services necessary to maintain and advance the employment of
15 individuals with severe disabilities by providing work in center-based employment,
16 community employment, or supported employment subprograms. Work in extended
17 employment should encompass the broad range of employment choices available to all
18 individuals and promote an individual's self-sufficiency and financial independence.

19 Subp. 16. **Extended employment provider or provider.** "Extended employment
20 provider" or "provider" means a rehabilitation facility as defined in subpart 34 and
21 certified by the commissioner under part 3300.2010 to provide center-based,
22 community, or supported employment.

23 Subp. 17. **Extended employment support plan.** "Extended employment support
24 plan" means the individual service plan developed with the provider, by the worker,
25 based on informed choice, with assistance from the worker's interdisciplinary team if
26 desired by the worker.

1 Subp. 18. **Extended employment worker or worker.** "Extended employment worker"
2 or "worker" means an individual with a most severe disability as defined in subpart 22
3 that results in serious limitations in three or more functional areas as defined in subpart
4 20 that affect employment, who requires and receives ongoing employment support
5 services as defined in subpart 31 over an extended period of time to maintain and
6 advance in employment, and who is reported to the department by the provider during
7 the contract period. Reference to extended employment worker always includes the
8 worker's legal representative.

9 Subp. 19. **Fundamental personnel benefits.** "Fundamental personnel benefits" means
10 personnel benefits provided by an extended employment provider to workers in
11 center-based employment and to workers in supported employment and community
12 employment when the provider is the payroll agent. Fundamental personnel benefits
13 include vacation, sick leave, holidays, and other mandated state and federal benefits.
14 Specific benefit requirements are identified in part 3300.2015, subpart 4.

15 Subp. 20. **Functional area.** "Functional area" means communication, interpersonal
16 skills, mobility, self-care, self-direction, work skills, or work tolerance. For the purposes
17 of parts 3300.2005 to 3300.2055:

18 A. "Communication" means the ability to effectively give and receive information
19 through spoken words or concepts, such as writing, speaking, and listening, or other
20 means of communicating such as sign language, mime, gesture, or other adaptive
21 methods.

22 B. "Interpersonal skills" means the ability to establish and maintain personal,
23 family, and community relationships as it affects, or is likely to affect, job performance
24 and security.

25 C. "Mobility" means the physical and psychological ability to move about from
26 place to place inside and outside the home, including travel to and from usual
27 destinations in the community for activities of daily living, training, or work.

3300.2005

1 D. "Self-care" means the skills needed to manage self or living environment, such
2 as eating, toileting, grooming, dressing, money management, and management of
3 special health or safety needs, including medication management, as they affect an
4 individual's ability to participate in training or work-related activities.

5 E. "Self-direction" means the ability to plan, initiate, organize, or carry out
6 goal-directed activities or solve problems related to self-care, socialization, recreation,
7 and working independently.

8 F. "Work skills" means:

- 9 (1) the ability to do specific tasks required to carry out job functions; and
10 (2) the capacity to benefit from training in how to perform tasks required to
11 carry out job functions.

12 G. "Work tolerance" means the capacity to effectively and efficiently perform jobs
13 requiring various levels of physical demands, psychological demands, or both.

14 Subp. 21. **Grievance.** "Grievance" means a claim or complaint brought to an extended
15 employment provider by a worker in the extended employment program or a
16 representative of the worker involving dissatisfaction with the worker's extended
17 employment program over an issue in which the extended employment program
18 provider has control. A worker who uses the grievance procedure does not give up the
19 right to use a worker appeal as defined in subpart 38.

20 Subp. 22. **Individual with a most severe disability.** "Individual with a most severe
21 disability" means an individual:

22 A. who has a severe physical or mental impairment that results in serious
23 limitations to employment in three or more functional areas;

24 B. whose employment can be expected to require ongoing employment support
25 services over an extended period of time; and

1 C. who has one or more physical or mental disabilities resulting from amputation,
2 arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness,
3 head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary
4 dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy,
5 musculoskeletal disorders, neurological disorders including stroke and epilepsy,
6 paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific
7 learning disability, and end-stage renal disease, or another disability or combination of
8 disabilities determined on the basis of an assessment for determining eligibility and
9 vocational rehabilitation needs to cause comparable serious functional limitation.

10 Subp. 23. **Informed choice.** "Informed choice" means a voluntary decision made by a
11 prospective or current worker or that person's legal representative, after becoming
12 familiar with worker rights and with alternative service options, and having been
13 provided sufficient relevant written and verbal information at an appropriate
14 comprehension level and in a manner consistent with the appropriate mode of
15 communication and primary language used by the prospective or current worker or that
16 person's legal representative.

17 Subp. 24. **Informed consent.** "Informed consent" means the written agreement with
18 the worker's extended employment support plan, or an agreement as documented in
19 the worker's case file, by a legally competent worker or a worker's legal representative
20 who is making decisions voluntarily and without coercion, and has knowledge to make
21 informed choices.

22 Subp. 25. **Integrated setting.** "Integrated setting," with respect to an employment
23 outcome, means a setting typically found in the community in which an individual with
24 the most severe disabilities interacts with nondisabled individuals, other than
25 nondisabled individuals who are providing services to that individual, to the same
26 extent that nondisabled individuals in comparable positions interact with other persons.

1 Subp. 26. **Interdisciplinary team.** "Interdisciplinary team" means the worker, the
2 worker's legal representative, service professionals, and other individuals chosen by the
3 worker or the worker's legal representative to develop, implement, and assess the
4 worker's extended employment support plan.

5 Subp. 27. **Legal representative.** "Legal representative" means an individual who is
6 legally authorized to make informed choices on a worker's behalf. A legal
7 representative may be one of the following individuals: the parent of a minor who has
8 not been emancipated; a court-appointed guardian or conservator of a worker who is 18
9 years of age or older, in areas where legally authorized to make decisions; a guardian ad
10 litem or special guardian or conservator, in areas where legally authorized to make
11 decisions; legal counsel if so specified by the worker; or other legally authorized
12 individual.

13 Subp. 28. **Natural supports.** "Natural supports" means ongoing employment support
14 services provided under an extended employment support plan by individuals who are
15 agents of the worker's employer. Community employment or supported employment
16 using a natural supports approach is the process of a provider helping an employer to
17 expand its capacity for training, supervising, and supporting one or more workers with
18 the most severe disabilities. This definition involves the direct hire of a worker in an
19 individual job, the location of which is not isolated by disability.

20 Subp. 29. **New program.** "New program" means an extended employment provider
21 funded by the department under part 3300.2030 that meets the certification
22 requirements in part 3300.2010 and that was not funded in the previous state fiscal year.

23 Subp. 30. **Nonexempt.** "Nonexempt" means subject to the provisions of the Fair Labor
24 Standards Act as set forth in United States Code, title 29, as amended.

25 Subp. 31. **Ongoing employment support services.** "Ongoing employment support
26 services" means any of the following services identified in the worker's extended

1 employment support plan as related to a worker's limitations in functional areas as
2 defined in subpart 20 and that are necessary to maintain or advance the worker's
3 employment:

4 A. facilitation of natural supports at the work site;

5 B. rehabilitation technology, job redesign, or environmental adaptations;

6 C. disability awareness training for the worker, or the worker's employer,
7 supervisor, or coworkers, and other services to increase the worker's inclusion at the
8 worksite;

9 D. job skill training at the work site;

10 E. regular observation or supervision of the worker;

11 F. behavior management;

12 G. coordination of support services;

13 H. job-related safety training;

14 I. job-related self-advocacy skills training to advance employment;

15 J. training in independent living skills, such as: money management, grooming
16 and personal care, social skills, orientation and mobility, and using public
17 transportation or drivers' training;

18 K. communication skills training such as sign language training, Braille, speech
19 reading, and the use of communication devices or other adaptive methods for the
20 worker, or the worker's employer, supervisor, or coworkers;

21 L. follow-up services such as regular contact with the worker's employer,
22 supervisor, or coworkers; the worker's parents, family members, advocates, or legal
23 representatives of the worker; and other suitable professional and informed advisors, in
24 order to reinforce and stabilize the job placement;

25 M. training in job seeking skills;

1 N. career planning, job development, or job placement to advance in employment;

2 O. transitional employment services; and

3 P. any other service that is similar to the services in items A to O, that is identified
4 in the worker's extended employment support plan, and that is needed to maintain or
5 advance the employment of a worker in the extended employment program.

6 Subp. 32. **Paid work.** "Paid work" means employment of the person served that
7 results in the production of products or provision of services.

8 Subp. 32a. **Primary language.** "Primary language," with reference to an individual
9 with limited English proficiency, means the language normally used by that individual.

10 Subp. 33. **Qualified health care professional.** "Qualified health care professional"
11 means a professional holding licensure to diagnose one or more of the disabilities
12 identified in subpart 22.

13 Subp. 34. **Rehabilitation facility or facility.** "Rehabilitation facility" or "facility"
14 means an entity as defined in Minnesota Statutes, section 268A.01, subdivision 6,
15 including an entity that meets the definition of community rehabilitation program
16 under the federal Rehabilitation Act, but that has not been certified under part 3300.2010
17 as an extended employment provider.

18 Subp. 35. **Supported employment.** "Supported employment" means competitive
19 employment in an integrated setting with ongoing support services for individuals with
20 the most severe disabilities for whom competitive employment has not traditionally
21 occurred or for whom competitive employment has been interrupted or intermittent as
22 a result of a severe disability; and who, because of the nature and severity of their
23 disabilities, need intensive ongoing employment support services from the designated
24 state unit and extended services after transition in order to perform this work; or
25 transitional employment for individuals with the most severe disabilities due to mental
26 illness.

1 Subp. 36. **Transitional employment.** "Transitional employment" means a series of
2 temporary job placements in competitive work in integrated settings with ongoing
3 support services for individuals with the most severe disabilities due to mental illness.
4 In transitional employment, the provision of ongoing support services must include
5 continuing sequential job placements until job permanency is achieved.

6 Subp. 37. **Work hours.** "Work hours" means the hours for which a worker performs
7 paid work, including hours of paid holidays, paid sick, paid vacation, and other paid
8 leaves. A work hour is the basic funding unit for allocating extended employment
9 program funds.

10 Subp. 38. **Worker appeal.** "Worker appeal" means an independent due process
11 procedure available to a current or prospective worker or a worker's legal
12 representative through federal or state statutes, case law, or rules.

13 **3300.2010 STATE CERTIFICATION.**

14 Subpart 1. **Scope.** This part governs the operation of any extended employment
15 provider engaged in, or rehabilitation facility seeking to engage in, the programs listed
16 in part 3300.2005, subpart 15. Extended employment program certification issued under
17 these certification procedures does not replace or modify any certificates issued by the
18 United States Department of Labor or the Minnesota Department of Labor and Industry
19 for purposes of subminimum wage payments.

20 Subp. 2. **Purpose.** The purpose of certification is to ensure that all providers meet the
21 department's minimum requirements for extended employment program funding.
22 Providers must be certified by the commissioner. Program certification as evidenced by
23 a valid provider certificate is required before the commissioner may provide funding for
24 an extended employment program pursuant to Minnesota Statutes, section 268A.15.

25 Subp. 3. **Certification procedure.** A rehabilitation facility seeking a certification as a
26 provider, including a provisional certification, must complete an official application

1 form available from the department. When a rehabilitation facility has been found in
2 compliance with all certification requirements, a single provider certificate will be
3 issued to a provider. The certificate will specify the type and location of all approved
4 programs. Provider certification shall be reviewed and reissued, as appropriate, on a
5 yearly basis.

6 Subp. 4. **Requirements for certification.** The commissioner shall certify rehabilitation
7 facilities that meet all of the following requirements as eligible extended employment
8 providers:

9 A. To be certified as a provider of center-based employment, an organization must
10 achieve and maintain accreditation in the program standards governing center-based
11 employment. To be certified as a provider of community and supported employment,
12 an organization must achieve and maintain accreditation in the program standards
13 governing community and supported employment. The provider must notify the
14 department of the upcoming date of each CARF survey, and provide standing written
15 permission to CARF to allow release to the department of the results of the accreditation
16 process and of site surveys, resurveys, supplemental surveys, reviews, and return visits.
17 The provider must maintain compliance each year with the following provisions of the
18 1997 CARF Standards Manual and Interpretive Guidelines for Employment and
19 Community Support Services, or with comparable sections in subsequent CARF
20 manuals: Section 1, Promoting Organizational Quality; Section 2, Promoting Individual
21 Service Quality; and Section 3, Organizational Employment Services and Community
22 Employment Services. The provider must make its worker records and performance
23 data available to the department for spot checks.

24 B. Providers must provide fundamental personnel benefits, as described in part
25 3300.2015, subpart 4, to workers in center-based employment and to workers in
26 community and supported employment when the provider is the payroll agent.

1 C. Providers shall have written grievance procedures for workers in center-based,
2 community, and supported employment. Grievances may be appealed to the
3 department for review. The department shall complete its review of a grievance that has
4 been appealed to the department within one month from the date the appeal request is
5 received. The grievance procedure for workers must include, as a final step, binding
6 arbitration as defined in Minnesota Statutes, section 268A.07, subdivision 2. The
7 following must be subject to the grievance procedure:

8 (1) working conditions in center-based, community, and supported employment
9 sites;

10 (2) the worker's extended employment support plan;

11 (3) the worker's access to employment in the community; and

12 (4) the quality and effectiveness of the worker's ongoing employment support
13 services.

14 D. The provider must comply with the requirements to provide workers with the
15 information on program planning and service delivery in part 3300.2025, subpart 7, in
16 the worker's primary language using appropriate modes of communication.

17 E. The provider must provide the worker with the extended employment support
18 plan in part 3300.2025, subpart 4, in the worker's primary language using appropriate
19 modes of communication.

20 F. The governing body of the provider must comply with Minnesota Statutes,
21 section 268A.08.

22 G. Members of the governing board and management staff of providers shall be
23 provided a minimum of eight hours of continuing education and training each year
24 over a three-year cycle concurrent with the provider's three-year accreditation cycle
25 with CARF. Members of the governing board and management staff of extended
26 employment provider shall complete training in each of the three subject areas listed in

3300.2010

1 subitems (1) to (3) during the course of the three-year training cycle. At a minimum,
2 two-thirds of the members of the governing board and management staff shall complete
3 this training. The provision of this training shall be documented in the record of
4 meetings of the provider's board of directors. Subjects for continuing education and
5 training include, but are not limited to, the following:

6 (1) legal mandates affecting the provider's programs, such as the federal
7 Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act, and the
8 extended employment program statutes and rules;

9 (2) practices to improve outcomes and increase the availability of extended
10 employment services to persons with the most severe disabilities; and

11 (3) understanding the programmatic and ethical responsibilities of nonprofit
12 organizations to the communities they serve.

13 H. In addition to the continuing education requirement in item G, the governing
14 board of providers must provide training for all members on the fiduciary
15 responsibilities of the directors of nonprofit organizations. Training on fiduciary
16 responsibilities shall be provided to new board members within the first year of their
17 term. In addition, members of the board of directors must receive copies of the
18 provider's financial audits and review all management letters that accompany the
19 financial audit. The record of board meetings shall document the provision of training
20 on fiduciary responsibilities and the receipt and review of the provider's financial audit
21 and management letter.

22 I. The provider must comply with United States Code, title 42, sections 12101, et
23 seq., of the Americans with Disabilities Act of 1990.

24 Subp. 5. **Provisional certification.** The commissioner may issue a provisional
25 certification to new providers or to existing providers for expanded programs for a
26 specified period of time, not to exceed 18 months. In order to obtain a provisional

1 certificate, all new or expanded extended employment programs covered by the
2 certificate must be in compliance with all requirements for certification except the
3 requirement for accreditation by CARF. However, if the provider is not accredited by
4 CARF, the provider must demonstrate a reasonable likelihood that the provider will
5 meet the requirements for accreditation by CARF and will receive such accreditation
6 within 18 months. If at the end of the 18-month period, the provider has not been
7 approved for accreditation by CARF, provisional certification will be terminated.

8 Subp. 6. **Probationary certification status.** The commissioner shall place on
9 probationary certification status any provider that has previously been certified where
10 the provider no longer meets all of the certification requirements, is not being operated
11 in compliance with the rule, or is under investigation by a law enforcement agency.
12 Probationary certification status permits a noncomplying provider to continue to receive
13 state funding while the plan for compliance is implemented. To qualify for probationary
14 certification status, the provider must submit a written plan which has been approved
15 by the commissioner and which will bring the program into compliance with the
16 certification requirements or other requirements of the rule within a reasonable time not
17 to exceed 12 months.

18 Subp. 7. **Extension of certification.** The commissioner may grant an extension if the
19 commissioner finds that a provider, through no fault of its own, no longer completely
20 meets certification requirements for full or provisional certification because:

21 A. a natural disaster such as a tornado or a flood, or a material change in
22 circumstances such as a labor strike or the loss of a building lease, has adversely affected
23 or completely halted operations; or

24 B. convincing evidence is submitted showing that CARF cannot schedule a timely
25 review.

26 A provider must request an extension in writing and state the reasons for the request.

1 The extension may not exceed one year and no consecutive extensions of a certificate
2 may be granted. A request for an extension should be made before the certificate's
3 expiration date.

4 Subp. 8. **Termination of certification.** Certification for providers not complying with
5 the requirements for certification will be terminated by the commissioner, and allocated
6 state funds will be withdrawn as provided in part 3300.2052. Withdrawal of state funds
7 is subject to the appeal provisions of part 3300.2055. Extended employment program
8 certification may be terminated when:

9 A. a provider no longer meets the requirements for certification under subpart 4;

10 B. a provider granted provisional certification does not meet the requirements for
11 provisional certification under subpart 5; or

12 C. a provider granted probationary certification does not fulfill the conditions of its
13 plan for compliance under subpart 6.

14 Review of compliance with certification requirements must take place yearly to
15 determine continuation of certification. Review for compliance may take place on
16 occasions not related to the yearly redetermination of certification continuance. The
17 department must give 30 days' notice of intent to remove or change certification except
18 when there is imminent danger to the health or safety of workers or gross failure to
19 comply with CARF or extended employment program rule requirements.

20 **3300.2015 EXTENDED EMPLOYMENT PROGRAM ELIGIBILITY.**

21 Subpart 1. **Scope.** This part governs the eligibility of workers in the extended
22 employment program. Each worker reported to the extended employment program
23 must conform to the criteria in this part. A person with a most severe disability is
24 presumed capable of working in the extended employment program when provided
25 with ongoing employment support services under an extended employment support
26 plan.

1 Subp. 2. **Extended employment program eligibility.** To be eligible for the extended
2 employment program, an individual must be an extended employment program worker
3 as defined in part 3300.2005, subpart 18.

4 Subp. 3. **Social security (FICA).** Workers and their payroll agents shall contribute, via
5 payroll taxes, to the federal Social Security program. Workers in supported employment
6 who are self-employed must pay the FICA self-employment tax for social security
7 benefits.

8 Subp. 4. **Fundamental personnel benefits.** Workers in center-based, community, and
9 supported employment when the provider is the payroll agent, shall receive the
10 following fundamental personnel benefits:

11 A. vacation, sick leave, and holidays, provided on a proportional basis as provided
12 to the nonexempt, full-time staff of the provider agency; at a minimum, workers will be
13 entitled five days of paid vacation, five days of paid sick leave, and five paid holidays
14 per calendar year; or

15 B. flexible paid leave, provided in lieu of vacation and sick leaves, that is provided
16 on a proportional basis as provided to the nonexempt, full-time staff of the provider
17 agency; at a minimum, workers will be entitled ten days of paid leave and five paid
18 holidays per calendar year; and

19 C. other mandated state and federal benefits including, but not limited to:

20 (1) United States Code, title 29, sections 2601 to 2635, the Family and Medical
21 Leave Act of 1993, and Minnesota Statutes, sections 181.940 to 181.943, as amended;

22 (2) time off work to vote according to Minnesota Statutes, section 204C.04, as
23 amended.

24 (3) leave for jury duty as provided by United States Code, title 28, section 1875,
25 and Minnesota Statutes, section 593.50, as amended; and

1 (4) military leave and reinstatement in employment as provided by United
2 States Code, title 28, chapter 43, sections 2021 and 2024, and Minnesota Statutes, section
3 192.261, subdivision 6, as amended.

4 Workers who are self-employed are exempt from this subpart.

5 Subp. 5. **Comparable benefits.** At the time of placement in community employment
6 or supported employment, the provider shall determine and document in accordance
7 with part 3300.2025, subpart 9, item E, subitem (3), that the benefits for workers for
8 whom the provider is not the payroll agent are comparable to the benefits provided by
9 the employer to its workers without disabilities.

10 Subp. 6. **Fair and equitable pay requirements.** Workers in supported employment
11 shall be paid at a rate equal to or greater than the state or federal minimum wage,
12 whichever is applicable. Workers in center-based and community employment may be
13 paid at a rate equal to or greater than the state or federal minimum wage, whichever is
14 appropriate, or at a lesser rate of pay according to a certificate issued under Code of
15 Federal Regulations, title 29, sections 525.1 to 525.24, or other federal regulations
16 providing for exemption from federal minimum wage requirements. A worker in
17 extended employment who is self-employed must realize net income that is the
18 equivalent or in excess of the hourly rate of pay required under the Minnesota Fair
19 Labor Standards Act, Minnesota Statutes, chapter 177, as amended, and the Federal Fair
20 Labor Standards Act, United States Code, title 29, as amended, when the number of
21 hours worked is compared with the income realized.

22 Subp. 7. **Participants in day training and habilitation programs.** Participants in day
23 training and habilitation programs funded under full-day per diem rates by the
24 Department of Human Services are not eligible for extended employment program
25 funding. Participants funded under part-day rates for day training and habilitation
26 services may be reported in the community and supported employment subprograms of
27 extended employment if the following criteria are met:

1 A. services provided during the hours reported to extended employment comply
2 with the definition and requirements of parts 3300.2005 to 3300.2055;

3 B. ongoing employment support services provided during the hours reported to
4 the extended employment program are provided under an extended employment
5 support plan, as described in part 3300.2025, subpart 4 or 6, and delivered by employees
6 of a certified provider or by agents of the worker's employer in accordance with part
7 3300.2025, subpart 6, not the employees of a day activity center licensed by the
8 Department of Human Services; and

9 C. the participant's status as a DTH participant is reported to the extended
10 employment program.

11 Subp. 8. **Other exclusions from eligibility for extended employment program**
12 **funding.** Participants in employment-related programs funded through state, federal, or
13 other sources are also excluded from eligibility for extended employment program
14 funding when:

15 A. the funding source is obligated to pay for total program costs for participants;
16 or

17 B. the funding source prohibits concurrent funding of program participants
18 receiving extended employment program services.

19 **3300.2020 REPORTING REQUIREMENTS.**

20 Subpart 1. **Scope.** This part governs the data on workers required by the department.

21 Subp. 2. **Required data elements.** The following data shall be submitted to the
22 department on each worker reported to the extended employment program:

23 A. legal name;

24 B. legal representative, if applicable;

25 C. social security number;

- 1 D. address;
- 2 E. disability and categories of functional limitations;
- 3 F. hours and wages by subprogram, by payroll agent, and by payroll period or
- 4 month;
- 5 G. referral source;
- 6 H. date of birth;
- 7 I. age at onset of disability;
- 8 J. gender;
- 9 K. ethnicity;
- 10 L. marital status;
- 11 M. residential status;
- 12 N. provider's site location;
- 13 O. job type;
- 14 P. subprogram: center-based employment, community employment, or supported
- 15 employment;
- 16 Q. date and reason left provider's program;
- 17 R. county of financial responsibility;
- 18 S. years of education;
- 19 T. special education participation;
- 20 U. SSI or SSDI recipient status; and
- 21 V. DTH program status.

22 Subp. 3. **Data elements required for payment.** Of the data elements listed in subpart
23 2, payment to providers is based on provider reporting of items A, C, F, and P. When a
24 worker is reported for payment under part 3300.2025, subpart 7, subpart 2, item V, must
3300.2020

also be reported to the department. Data elements required for payment must be reported in the format prescribed by the department.

3300.2025 PROGRAM PLANNING, SERVICE DELIVERY, AND CASE RECORDS.

Subpart 1. Scope. This part governs program planning, service delivery, and case records for the extended employment program.

Subp. 2. Standards for program planning, service delivery, and case records. Standards for program planning, service delivery, and case records for the extended employment program are contained in The 1997 Standards Manual and Interpretive Guidelines for Employment and Community Support Service published by CARF, which are incorporated by reference. This publication is updated on a yearly basis and the standards applicable to any state fiscal year for which a provider is funded will be found in the most recent edition of this publication available at the beginning of the state fiscal year. Copies are available at the Educational Resource Center, 501 Capitol Square, 550 Cedar Street, Saint Paul, Minnesota 55101. The Educational Resource Center participates in the Minitex/PALS Interlibrary Loan Consortium.

Subp. 3. Additional standards for program planning, service delivery, and case records. In addition to the standards in subpart 2, providers shall meet the requirements in subparts 4 to 6.

Subp. 4. Extended employment support plans. All workers in center-based, community, and supported employment shall have an extended employment support plan. The plan, to be reviewed at yearly intervals, or as required under subpart 8, or if changes in the worker's situation require more frequent reviews, describes the worker's employment goals and the ongoing employment support services to be provided to reach the worker's goal. The plan shall include the following:

A. the worker's goals and objectives, including:

(1) employment goals and goals for career advancement;

1 (2) preferences for employment setting, integration, range or level of pay, work
2 hours, and benefits; and

3 (3) when a goal in center-based employment is selected, the plan shall state the
4 reasons for this choice;

5 B. the timeline for reaching the worker's employment goals and objectives;

6 C. the worker's vocational strengths, interests and preferences, work skills, and
7 general health status;

8 D. the worker's functional areas affecting employment that require the provision of
9 ongoing employment support services;

10 E. an assessment identifying the ongoing employment support services a worker
11 needs to work in the community;

12 F. the specific ongoing employment support services to be provided, including:

13 (1) the relationship of the ongoing employment services to the worker's
14 functional areas affecting employment;

15 (2) how the need for ongoing employment support services will be met with
16 existing services or by a plan arranging for or developing these services;

17 (3) the strategies for providing ongoing employment support services including
18 the consideration of assistive technology and natural supports;

19 (4) who will be providing the ongoing employment support services; and

20 (5) timelines for developing and providing ongoing employment support
21 services and the estimated frequency of these services;

22 G. measures and procedures to assess the attainment of worker goals and
23 objectives;

24 H. the names of the participants in the planning and preparation of the worker's
25 extended employment support plan; and

1 I. the signature of the worker designating informed consent.

2 A copy of the plan and any revisions shall be promptly provided to the worker in the
3 worker's primary language using appropriate modes of communication.

4 Subp. 5. **Minimum contact by provider.** The extended employment support plan will
5 include assurances that the worker in community and supported employment will
6 receive a minimum of two in-person contacts per month in the provision of planned
7 ongoing employment support services, unless the ongoing employment support is
8 provided through natural supports as described in subpart 6.

9 Subp. 6. **Reporting workers receiving natural supports to the extended employment**
10 **program.** The ongoing employment support services for a worker must be identified in
11 the worker's extended employment support plan and may be provided indirectly
12 through an agent of the worker's employer when:

13 A. the worker is in an employer-paid integrated work site as defined in part
14 3300.2005, subparts 25 and 28;

15 B. there is a written agreement with an employer that specifies:

16 (1) the agent of the employer who will be involved in providing the worker's
17 ongoing employment support services;

18 (2) the nature of the information, technical assistance, or other support services
19 the provider provides to the agent of the employer;

20 (3) the specific ongoing employment support services that are provided to the
21 worker by the agent of the employer; and

22 (4) assurances that the provider will, at a minimum, make two in-person
23 contacts with the agent of the employer, or the worker, or a combination of the
24 employer and worker each month to:

25 (a) provide information, technical assistance, or other ongoing employment
26 support services; and

1 (b) evaluate the need for and effectiveness of the ongoing employment
2 services the agent of the employer provides to the worker.

3 Subp. 7. Worker information on program planning and service delivery.

4 A. The department shall provide information, in the worker's primary language
5 using appropriate modes of communication, on program planning and service delivery
6 in extended employment. This information will be ready for distribution to providers by
7 January 1, 1999, and shall include:

8 (1) individual service planning process provided in the CARF standards,
9 including:

10 (a) the content of a typical plan as identified in the CARF interpretive
11 guidelines;

12 (b) the ongoing employment support services available in extended
13 employment;

14 (c) the role and rights of the worker and the worker's legal representative in
15 the development of an extended employment support plan;

16 (d) fundamental personnel benefits;

17 (e) examples of persons from social service agencies and others in the
18 community who can be involved in planning services; and

19 (f) the requirement to assess the worker's potential for working in the
20 community on a semiannual basis and identify in writing the reasons a worker is not
21 working in the community;

22 (2) worker rights to reasonable accommodation in accessing ongoing
23 employment support services in extended employment;

24 (3) worker rights to review, appeal, and grievance procedures;

25 (4) the summary level performance information available on provider outcomes;

1 (5) worker rights under the federal Rehabilitation Act of 1973, as amended; and

2 (6) worker rights under the Americans with Disabilities Act.

3 B. Providers shall distribute information on the extended employment program
4 planning and service delivery to the worker and the worker's legal representative on a
5 yearly basis. This information shall be made available to workers using appropriate
6 modes of communication in the primary language of the worker and the worker's legal
7 representative.

8 This information shall include:

9 (1) a description of the provider's center-based, community, and supported
10 employment programs, including:

11 (a) the right to have all program and service information provided in an
12 accessible manner, and the right to reasonable accommodation for accessing the
13 provider's services and activities;

14 (b) the names of staff persons responsible for key aspects of the worker's
15 center-based, community, or supported employment program;

16 (c) a statement describing the rights to review records, and descriptions of the
17 processes of grievance and appeal, and examples of the situations in which either or
18 both can be used; and

19 (d) a summary of the benefits available to the worker; and

20 (2) the information on program planning and service delivery identified in item

21 A.

22 Subp. 8. Annual reassessment of extended employment support plans. Extended
23 employment support plan review with interdisciplinary team involvement, unless
24 waived by the worker, shall occur at least yearly. A plan with a goal of community or
25 supported employment that has not been achieved or maintained shall be reviewed

every six months. A written report of this review or an updated extended employment support plan shall summarize this review and shall be maintained in the case file. The record of the reassessment shall include the names of the participants in the reassessment of the worker's extended employment support plan and the signature of the worker designating informed consent. A copy of the reassessment shall be promptly provided to the worker in the worker's primary language using appropriate modes of communication.

This reassessment must address:

A. the worker's satisfaction with employment and ongoing employment support services;

B. the effectiveness of the worker's extended employment support plan in achieving the worker's vocational objective;

C. the worker's continuing need for ongoing employment support services to maintain or advance employment; and

D. the worker's interest in changing or advancing in employment.

Subp. 9. **Case records.** A confidential record shall be maintained for each person served in the extended employment program. The case record of the worker communicates appropriate information in a form that is complete, clear, and current. The case record shall be retained for a minimum of three years after the completion of the audit process for the state fiscal year when the worker was last a reported worker in the extended employment program. The provider shall maintain written documentation of the worker's extended employment services that may include electronic documentation and file systems.

Case records must include the information listed in items A to H. Case records of workers in community or supported employment shall also include the information in either item I or J. The items are:

1 A. personal identification data, including: social security number, legal status, date
2 of birth, residential status and address, and, if applicable, name of guardian or
3 conservator;

4 B. eligibility for extended employment, using the criteria in part 3300.2015, subpart
5 2, determined by either:

6 (1) the provider and documented in the provider's intake reports; or

7 (2) the rehabilitation services branch counselor and documented in the
8 rehabilitation services branch eligibility information and referral reports given to the
9 provider;

10 C. written diagnosis of a severe disability by a qualified health care professional
11 who is not employed by the rehabilitation facility, and referral source reports, unless
12 eligibility in item B is determined by a counselor from the rehabilitation service branch
13 of the department;

14 D. the worker's extended employment support plan;

15 E. employment data, including: employers, supervisors, job duties, rates of pay,
16 benefits, start dates, termination dates, and evidence that the provider maintains
17 compliance with certification requirements by providing to the worker the following:

18 (1) fundamental personnel benefits as described in part 3300.2015, subpart 4;

19 (2) contribution to the worker's social security account as described in part
20 3300.2015, subpart 3;

21 (3) comparable benefits as described in part 3300.2015, subpart 5; and

22 (4) fair and equitable payment of wages as described in part 3300.2015, subpart
23 6;

24 F. the reassessment of the worker's extended employment support plan;

25 G. documents of the payroll agents which verify the hours of paid work reported
26 to the extended employment program for the worker;

1 H. program summaries and termination or discharge reports;

2 I. the ongoing employment support services provided to supported employees by
3 the provider that includes, at a minimum, the date and service record of two in-person
4 contacts per month with the worker; and

5 J. the written natural supports agreement between the provider and the agent of
6 the supported worker's employer including, at a minimum, a date and service record of
7 two in-person contacts with the agent of the employer, or the worker as described in
8 subpart 6.

9 **3300.2030 NEW OR EXPANDED PROGRAMS.**

10 Subpart 1. **Funding for new or expanded programs.** The department shall provide
11 notice of the availability of funding for new or expanded programs through a request
12 for proposals published in the State Register. The department shall make copies of the
13 request for proposals available to a city, town, county, nonprofit corporation, state
14 regional center, or combination thereof. Applicant organizations shall submit an
15 application for a new extended employment program or for expansion of an existing
16 extended employment program. The commissioner shall use the following criteria in
17 reviewing applications for a new or expanded program:

18 A. the need for the new or expanded program;

19 B. the relationship of the new or expanded individual program to any current
20 programs in terms of identified needs;

21 C. the performance of current programs;

22 D. the geographic distribution of the current programs and the new or expanded
23 program in relationship to geographic needs;

24 E. efforts to foster innovation and promote state-of-the-art best practices in
25 supported employment consistent with Minnesota Statutes, section 268A.15,
26 subdivision 6; and

3300.2030

1 F. the availability or funding for new or expanded programs.

2 Subp. 2. **Department review of proposals.** The department shall base its decisions on
3 proposals upon objective criteria and a review process that includes representatives of
4 affected county social service agencies; the local vocational rehabilitation office,
5 providers outside the affected service area, representation from racial and ethnic
6 minorities, and advocacy organizations as defined in part 3300.2005, subpart 3.

7 Subp. 3. **Exception to contract procedures and adjustment of state grant funds for**
8 **new or expanded programs.** New or expanded programs under this part may be
9 exempt from the contracting procedures in part 3300.2035, subpart 4, item A, and the
10 adjustment of state grant funds in part 3300.2035, subpart 8, for up to three years.

11 **3300.2035 ALLOCATION OF EXTENDED EMPLOYMENT PROGRAM FUNDS.**

12 Subpart 1. **Unit of distribution of extended employment program funds.** The unit of
13 distribution of extended employment program funding is the payment for one work
14 hour performed by an eligible worker and reported to the department in the extended
15 employment program.

16 Subp. 2. **Notice of availability of funding.** The department will publish a notice of
17 availability of state grant funds in the State Register for each state fiscal year. The notice
18 will include a description of the funds available, the application procedure for these
19 funds, a statement of the funding criteria in parts 3300.2005 to 3300.2055, and the
20 timetable for the allocation of state grant funds.

21 Subp. 3. **Application and guidelines for funding.** The department will make the
22 form of application and guidelines for extended employment program funding
23 available to all interested parties upon request. The department's guidelines shall
24 include information on priorities for program funding, including target populations or
25 geographic distribution of services, that will be addressed in the allocation of state grant
26 funds. Certified providers must apply for grant funds on the form specified by the
27 department.

1 Subp. 4. Procedures for contracts with providers for center-based, community, and
2 supported employment. Each fiscal year, the department will enter into annual
3 contracts with providers for a specific allocation from the center-based fund or the
4 community support fund according to items A to C.

5 A. A provider's contract starting point each year will be determined by the
6 previous year's contract and the previous year's reported contract production, as
7 follows: (i) when the provider's reported contract production in the previous year is
8 equal to or greater than 95 percent of the contract, the provider's starting point shall be
9 the previous year's contract; or (ii) when the provider's reported contract production in
10 the previous year is less than 95 percent of the contract, the provider's starting point will
11 be the reported contract production plus five percent of the previous contract.

12 (1) The starting point for contracts to providers for state fiscal year 1999 shall be
13 calculated using the following method:

14 (a) for the community support fund, the lesser of each provider's total
15 contracted or reported hours of work and service in supported employment as defined
16 under the prior extended employment rule in part 3300.2050, subpart 31a, in state fiscal
17 year 1998 shall be multiplied by \$2.04 to determine the provider's contract starting point
18 from the community support fund for state fiscal year 1999; and

19 (b) for the center-based fund, the lesser of each provider's total contracted or
20 reported hours of work and service in center-based employment in state fiscal year 1998
21 shall be multiplied by \$1.13 to determine the provider's contract starting point from the
22 center-based fund for state fiscal year 1999.

23 B. Two and one-half percent of a provider's contracted allocation from either the
24 center-based fund or the community support fund can be earned by reported
25 production that exceeds the provider's contracted allocation in the other fund. This
26 reported contract production cannot be used to adjust the contract starting point under
27 item A. This provision cannot be exercised in the subsequent fiscal year.

1 C. The redistribution of allocation from underproduction to providers is as
2 provided in subitems (1) to (3).

3 (1) Where a provider's underproduction in the center-based fund or the
4 community support fund is over five percent of the contracted level of allocation, the
5 allocation in excess of five percent shall be redistributed to other providers, unless a
6 variance for economic hardship has been approved under part 3300.2040.

7 (2) Allocation from underproduction shall be redistributed to other providers on
8 the basis of guidelines established by the department for that funding year. The
9 guidelines shall consider unmet needs of target populations and the geographic
10 distribution of center-based employment, community employment, and supported
11 employment.

12 (3) When the allocation to be redistributed under department guidelines is at
13 least one percent of the total allocation for either the center-based fund or the
14 community support fund, the department shall issue a request for proposals under part
15 3300.2030, subparts 1 and 2. Alternatively, the allocation to be redistributed may, at the
16 commissioner's discretion, be used to adjust the statewide uniform rates under subpart
17 6, item B.

18 Subp. 5. **Annual survey.** The department shall conduct an annual survey of extended
19 employment program needs for center-based, community, and supported employment,
20 including the geographic distribution of these services. The results of this survey shall
21 be considered in the department's application and guidelines for funding in subpart 3,
22 and in the department's issuance of requests for proposals under parts 3300.2030,
23 subparts 1 and 2, and 3300.2052, subpart 1, item C. This information shall be available to
24 public officials, workers, providers, advocacy organizations, and social service agencies.

25 Subp. 6. **Statewide uniform rates.** Effective July 1, 1998, the allocation and
26 distribution of extended employment program funds to center-based employment,

1 community employment, and supported employment will be based on the work hour
2 rates in items A and B.

3 A. There shall be three statewide uniform rates. The rate for a work hour in
4 supported employment shall be \$2.40 per hour. The rate for a work hour in community
5 employment shall be \$2.13 per hour. The rate for a work hour in center-based
6 employment shall be \$1.19 per hour.

7 B. The statewide uniform work hour rates for center-based employment,
8 community employment, and supported employment may, at the commissioner's
9 discretion, be adjusted to account for changes in the Consumer Price Index (CPI).

10 Subp. 7. **Statewide allocation of extended employment funds to center-based**
11 **employment fund and community support fund.** For each state fiscal year, the
12 department shall determine the statewide allocation for the center-based fund and the
13 community support fund according to items A to D.

14 A. From the state appropriation, the department shall reserve for the community
15 support fund an amount of dollars equal to the sum of the allocations for the starting
16 point for all providers with contracts and making application for funding.

17 B. From the state appropriation, the department shall reserve from the
18 center-based fund an amount of dollars equal to (1) the sum of the allocations for the
19 starting point for all providers with contracts and making application, less (2) any
20 allocation withheld resulting from the request for proposals process, multiplied by the
21 statewide uniform rate for center-based employment. However, no future statewide
22 allocation of extended employment funds to the center-based fund shall exceed
23 \$4,279,000, the funding allocation for center-based employment in state fiscal year 1997.

24 C. Adjustments to the statewide allocation may be made based on shifts of dollars
25 from the center-based fund to the community support fund as requested by providers.
26 Shifts will be adjusted at the starting point for each provider requesting shifts.

1 D. The remainder of the state appropriation, after items A to C are completed, will
2 be subject to distribution according to the department's application and guidelines for
3 funding under subpart 3.

4 Subp. 8. Adjustment of state grant funds allocated to providers.

5 A. The department must distribute state grant funds based on provider reporting
6 of work hours provided to workers in center-based employment, community
7 employment, and supported employment.

8 B. Beginning in state fiscal year 2000, provider contracts must also be adjusted for
9 the wage level performance incentives in part 3300.2045.

10 C. Compliance audits of eligible work hours shall be performed and adjustments
11 made to the allocation of state grant funds to providers after the close of the funding
12 year as provided in subitems (1) and (2).

13 (1) After the close of each funding year, an audit of each provider must be
14 conducted using the department's compliance audit standards according to generally
15 accepted auditing standards as follows:

16 (a) The audits must be performed by independent auditors at the expense of
17 the providers.

18 (b) The department must seek input from providers and independent
19 auditors in the development of the compliance audit standards.

20 (c) The department must review the compliance audit standards on an annual
21 basis and seek the input of providers and independent auditors in the review of the
22 standards. The department will make the standards available no later than 30 days prior
23 to the end of each state fiscal year.

24 (d) The extended employment program factors subject to the department's
25 compliance audit must include hours and wages and evidence of ongoing employment
26 support consistent with the worker's extended employment support plan.

(e) Completed audits must be submitted to the department within 90 days from the close of the funding year. Audits submitted after the due date will not adjust allocations beyond the allocation earned by the reported work hours during the contract period.

(2) Audit adjustments to provider allocations must be made as follows:

(a) Within 45 days from the receipt of an accepted final audit report, the department shall make final audit adjustments to provider allocations.

(b) Based on the results of the compliance audit, the department must seek repayment from providers for hours of employment in center-based employment, community employment, or supported employment that were not provided according to the provider's contract.

(c) The department's determination of the amount of repayment and the reasons for the repayment is subject to the appeal provisions of part 3300.2055.

(d) The funds repaid by providers as a result of the final audit adjustments must be distributed as a wage level incentive under part 3300.2045.

3300.2040 CONSIDERATION OF ECONOMIC CONDITIONS.

The department must provide a variance to the contract starting point in part 3300.2035, subpart 4, for a provider that establishes that it was unable to produce the number of hours required by the provider's contract during the previous contract period due to circumstances beyond the control of the provider's management.

A. Circumstances beyond the control of the provider's management include conditions such as fire or natural disaster, the cessation of a major contract, the movement of a major employer out of the area, or a local unemployment level substantially higher than the statewide average.

B. A provider seeking a variance to the contract starting point must request this

1 variance in the annual application for state grant funds in part 3300.2035. The request
2 for variance to the contract starting point must state the reasons for the request and the
3 plan for corrective action to meet contracted hours during the next contract period.

4 C. A provider who requests and is granted a variance to the contract starting point
5 will retain the work hour level from the previous contract period. However, the
6 underproduction of contracted hours is subject to repayment in the adjustment of the
7 allocated state grant funds in part 3300.2035, subpart 8.

8 **3300.2045 WAGE LEVEL INCENTIVE.**

9 All funds not paid out to providers as a result of underproduction and all funds
10 repaid to the department by providers as the result of final audit adjustments must be
11 used as a performance fund for extended employment providers whose workers' wages
12 meet or exceed the federal minimum wage.

13 The incentive fund must be distributed to each extended employment provider based
14 on the proportionate share of hours of work where the statutory minimum or a higher
15 wage was paid. The ratio is the provider's hours divided by the total hours meeting
16 minimum wage reported by all extended employment providers.

17 The incentives are calculated and paid separately for the center-based fund and the
18 community support fund.

19 **3300.2052 WITHDRAWAL OF ALLOCATED FUNDS.**

20 Subpart 1. **Criteria for withdrawal of allocated state funds.** The commissioner may
21 withdraw allocated state funds from a provider when:

22 A. an extended employment program is not being administered according to the
23 extended employment program rule;

24 B. program certification has been terminated as provided in part 3300.2010,
25 subpart 8; or

1 C. a review of an existing provider's programs demonstrates a need for new or
2 alternative services. The commissioner may then withdraw funding from the existing
3 extended employment provider and issue a request for proposals. The commissioner
4 shall consider the following factors in determining the need for new or alternative
5 services:

6 (1) the results of the department's annual survey or program evaluation
7 indicates dissatisfaction with an existing provider's services;

8 (2) the existing provider has not complied with department requests to
9 implement changes in ongoing employment support services to workers in the extended
10 employment program;

11 (3) the local vocational rehabilitation office requests new or alternative extended
12 employment program services; and

13 (4) a request from a county social service agency that the department issue a
14 request for proposals for existing extended employment program funds; the issuance of
15 a request for proposals for extended employment services by a county social services
16 agency; or a change in the vendor for extended employment services by the county
17 social services agency.

18 Where there is a demonstrated need for new or alternative services, the department
19 shall consult with the county social services agency and the local vocational
20 rehabilitation office in developing the request for proposals and issue a request for
21 proposals under part 3300.2030, subparts 1 and 2. The request for proposals shall
22 identify the needs to be addressed by new or alternative services. The department shall
23 also notify the existing provider of the request for proposals and of the right of the
24 existing provider to apply for funding under the request for proposals.

25 Subp. 2. Notice of withdrawal. Except where there is an imminent danger to the
26 health or safety of workers, the commissioner must give written notice at least 45 days

1 before allocated state funds may be withdrawn from a provider. The notice must state
2 the reasons for the withdrawal of funds. If program certification is to be terminated in
3 addition to the withdrawal of funds, the notice must also state the reasons for
4 termination of certification.

5 Subp. 3. **Right of appeal.** A provider has the right to appeal the commissioner's
6 withdrawal of allocated state funds. The appeal procedure is provided for in part
7 3300.2055.

8 Subp. 4. **Reallocation.** When the withdrawn allocation to be redistributed is less than
9 one percent of the total allocation for either the center-based fund or the community
10 support fund, the reallocation shall take place under the department guidelines in part
11 3300.2035, subpart 3. When the reallocation to be redistributed is one percent or more of
12 the total allocation in either the center-based fund or the community support fund, the
13 withdrawn funds shall be reallocated by the commissioner through the request for
14 proposals process in part 3300.2030, subparts 1 and 2. Withdrawn funds may be
15 reallocated by the commissioner on an interim basis for up to 120 days when that is
16 necessary to continue the employment of workers in the extended employment program
17 until the request for proposals process in part 3300.2030, subparts 1 and 2, can be
18 completed.

19 3300.2055 APPEAL PROCEDURE

20 Subpart 1. **Scope.** The procedure in this part governs all appeals initiated by
21 providers having a right of appeal under:

22 A. appeals of the department's withdrawal of allocated state funds from a provider
23 in part 3300.2052, subpart 1; and

24 B. the appeal of a decision of the department concerning the provider's allocation
25 of state grant funds in part 3300.2035, including actions resulting from the department's
26 monitoring of the extended employment program that affect the status of the provider's
27 certification or the provider's funding under the extended employment program.

3300.2055

1 Subp. 2. **Notice of intent to appeal.** A provider appealing department decisions must
2 provide a written notice of intent to appeal to the department. The written notice of
3 intent to appeal must be received by the department within 30 days from the date that
4 the provider received notice from the department of the action that the provider wishes
5 to appeal. If the notice of intent to appeal is not received from the provider within the
6 30-day period, the decision of the department is final. The notice of intent to appeal
7 must state the grounds for the appeal, including relevant facts and issues that could be
8 addressed at a contested case hearing.

9 Subp. 3. **Informal review.** Within 30 days after the department receives a notice of
10 intent to appeal, the commissioner or the commissioner's designee shall contact the
11 provider and discuss the reasons for the appeal. The contact by the department's
12 representative may be oral or written. Before the end of the 30-day period for informal
13 review, the department's representative must make a written decision concerning the
14 provider's appeal. The decision by the department's representative must state the
15 department's position on the issue under appeal, the basis of that position, and the
16 provider's right to request a contested case hearing under subpart 4.

17 Subp. 4. **Contested case.** If the issue in the informal review as provided in subpart 3
18 has not been resolved, the provider may make a written request for a contested case
19 hearing before an administrative law judge as provided in Minnesota Statutes, sections
20 14.57 to 14.62. The written request for a contested case hearing must be received by the
21 department no more than 30 days after the date when the provider received written
22 notice of the decision of the department's representative following the informal review
23 in subpart 3. Within 15 days from the date the department receives a provider's request
24 for a contested case hearing, the department must request the Office of Administrative
25 Hearings to assign an administrative law judge to hear the appeal and schedule a
26 hearing. The contested case hearing must be initiated and conducted according to parts
27 1400.5100 to 1400.8500.

1 Subp. 5. **Decision.** The decision of the administrative law judge will be recommended
2 for the commissioner's adoption. The commissioner's decision on the issue under
3 appeal is the final decision of the department.

4 **REPEALER.** Minnesota Rules, parts 3300.1950; 3300.2050; 3300.2150; 3300.2250;
5 3300.2350; 3300.2450; 3300.2550; 3300.2650; 3300.2750; 3300.2850; 3300.2950; and
6 3300.3050, are repealed.